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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1995

Leslie Knighten, Petitioner

Versus

Todd Electric, Inc, And Commercial Union Insurance Company, Respondents

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ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

PETITION FOR A WRIT OF CERTIORARI

Leslie E. Knighten, Pro Se
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QUESTIONS PRESENTED

I.

WHETHER LOUISIANA LAW VIOLATES THE DUE PROCESS CLAUSE OF THE CONSTITUTION OF THE UNITED STATES BY ALLOWING THE EMPLOYER\CARRIER TO TERMINATE WORKERS' COMPENSATION BENEFITS OF THE PETITIONER WITHOUT ANY PRIOR HEARING BEFORE THE OFFICE OF WORKERS' COMPENSATION ADMINISTRATION, AND IN PLACING THE ENTIRE BURDEN OF PROOF UPON THE PETITIONER TO LITIGATE FOR WORKERS' COMPENSATION BENEFITS.

LIST OF ALL PARTIES TO THE PROCEEDINGS

1. Todd Electric, Inc,
2. Commercial Union Insurance Company
3. Leslie E. Knighten

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The September 29, 1995 Ruling of the Supreme Court Of Louisiana whose judgment is herein sought to be reviewed, is reported as case No. 95\C\1606, and is reprinted in Appendix A to this Petition. The Supreme Court of Louisiana did not enter a written opinion, in this case . The Petitioner was informed by the Clerk's office that an application for Rehearing would not be considered pursuant to Supreme Court Rules, therefore an Application for Rehearing was not filed.

The May 25, 1995 and April 25, 1995 decisions of the First Circuit Court Of Appeals, Parish Of East Baton Rouge whose judgment is herein sought to be reviewed, is reported as case No. 94\CA\0861 and is reprinted in Appendix B and C to this Petition

The April 5, 1993 Judgment and February 9, 1993 Order of the Office Of Workers' Compensation Administration District 5, Parish of East Baton Rouge whose rulings is herein sought to be reviewed, is reported as case No. 92\00889 and is reprinted in Appendix D and E to this Petition.

JURISDICTION

Jurisdiction of this Court is invoked under the authority of Title 28 U.S.C.

§1257 and by Part III., Rule 10, (c) of the Rules of the Supreme Court of the United States.

Jurisdiction, is also invoked by and through the Fourteenth Amendment to the Constitution Of The United States.

The Attorneys Generals Office of the State of Louisiana has been served with a Copy of this Petition pursuant to Title 28 Sec. 2403(b) and pursuant to Rule 29(4)(c) of the Rules of the Supreme Court of the United States.

STATUTE INVOLVED

Constitution Of The United States,

Fifth and Fourteenth Amendment to the United States Constitution is set forth in the Appendix to this Petition.

OTHERS

Louisiana Code Of Civil Procedure

Art. 1841 and Art. 2083 of the C.C.C.P. of Louisiana are set forth in the Appendix to this Petition.

Due to no fault of his own and as of this day the Petitioner is without knowledge as to what sections of the Louisiana statutes or regulations that the Respondents relied on in the termination of Petitioners Workers' Compensation Benefit. The State Court denied every attempt the Petitioner made in respect to uncovering the relevant state law. Therefore, the Petitioner was unable to be specific in prosecution of

this appeal in the state courts and before this court.

STATEMENT OF THE CASE

On January 22, 1992 the Petitioner filed a timely Disputed Claim for Compensation (R.4-5) including an Appendix "A" (R.9-14), raising numerous issues, with attached Exhibits against Respondent, Todd Electric, Inc. and Respondent, Commercial Union Insurance Co., three of issues are as follows;

> (1) Was Todd Electric Inc. by and through their agent Commercial Union Insurance company(s) in compliance with legislated law by terminating the Worker's Compensation Benefits of Leslie Knighten without any formal hearing through the Office Of Worker's Compensation.
>
> (2) Was Todd Electric Inc. by and through their agent Commercial Union Insurance company(s) in compliance with judicial law by terminating the Worker's Compensation Benefits of Leslie Knighten without any formal hearing through the Office Of Worker's Compensation.
>
> (3) Was Todd Electric Inc. by and through their agent Commercial Union Insurance Company(s) in compliance of the law by terminating the Worker's Compensation Benefits of Leslie Knighten without notice or reason?

additionally, Petitioner filed, in respect to the same, a timely Claim Data Form (R.15&16) including Appendix "B" (R.17-24) with attached Exhibits;

Process was served on both

Respondents being Respondent, Todd Electric, Inc. and Respondent, Commercial Union Insurance Co.

Respondent, Todd Electric, Inc. filed an Answer to Petitioner complaint, in the form of a general denial, with a filing date of March 1, 1992. Petitioner later discovered that someone from the office of workers's compensation back dated the filing date of this document;

On March 27, 1992 the Petitioner filed a Request For Preliminary Judgment.

Respondent, Commercial Union Insurance Company, filed an Answer to Petitioner complaint, in the form of a general denial, on or about June 12, 1992.

The Petitioner submitted and attempted to propound discovery from both Respondents, in light of the fact there were two defendants served and two answers filed.

In the prosecution of the Petitioner's claim for compensation. The Petitioner filed numerous motions and attempted to propound discovery in an attempt to have a clearer understanding of exactly why and pursuant to what state laws the Petitioner's Workers' Compensation Benefits were terminated.

The State Court refused to allow the Petitioner to propound discovery from Respondent, Commercial Union Insurance Company, in the form of Interrogatories that would have required them to state in length and in detail the legal authority

in which they relied on in the termination of Petitioner's benefits.

In light of the fact that both Respondents had filed general denials, on February 10, 1993 the Petitioner filed a Motion for Summary Judgment against Respondent, Commercial Union Insurance Company. On March 23, 1993 the Petitioner filed a Memorandum In Support of Petitioner's Motion For Summary Judgment, with Exhibits and supporting affidavit.

Additionally on February 10, 1993 Petitioner filed a Motion To Reinstate Workers' Compensation Benefits and For Any and All Back Payments Of Benefits And\Or Similar Motion, On February 23, 1993, Petitioner filed a Memorandum in support of his motion to reinstate. **In this pleading a constitutional question was raised in respect to the termination of Petitioners Benefits without litigating before the Office of Workers' Compensation. before the termination of Petitioner's benefits.**

On March 16, 1993 an Order was signed setting a hearing date of March 29, 1993 in respect to Petitioner's Amended Motion To Set Rulings(s) and\or Order(s) Aside Or Similar Motion, Motion For Summary Judgment and Motion To Reinstate;(R.183)

On March 23, 1993 the Respondents filed a Memorandum In Opposition To Motion For Summary Judgment without Exhibits, without a supporting affidavit and failed to challenge the issue of the Answers being a "general denial";

On March 29,1993 a hearing was

conducted by Judge Norbert Rayford, in the process of this hearing the Petitioner raised several Constitutional issues, including a direct challenge of a Louisiana Statute as being Unconstitutional and in violation of the Constitution of the United States. Judge Norbert Rayford made the following Ruling, in pertinent part, as follows: (R.238&239);

> "THE COURT: IT'S MY RULING
> MR. KNIGHTEN: SIR?
> THE COURT: IT'S MY RULING THAT OUR PROCEDURES ARE FUNDAMENTALLY FAIR AND DO MEET CONSTITUTIONAL CHALLENGE. NOW, YOU CAN TAKE THAT DECISION TO THE FIRST CIRCUIT COURT OF APPEALS OR THE STATE SUPREME COURT OR THE UNITED STATES SUPREME COURT. I THINK THAT THE MORE TIME YOU WASTE ON CHALLENGING THAT, THE LONGER YOU'RE GOING TO BE WITHOUT YOUR BENEFITS."

constitutional challenges were pleaded and raised by the Petitioner, argued by the Respondents, and a Judgment (R.217 and R.218) was entered by the state court of first instance, where the following is found (R.217):

> It is further the ruling of this Court that the claimant's assertion that the Workers' Compensation Administration denies him due process of law under the state and federal constitution is without merit and is rejected."

consequently, federal jurisdiction was invoked. On or about April 26, 1993 Judge Norbert Rayford entered a Judgment in respect to Hearing held on March 29, 1993, and further denied all of the

pending motions of the Petitioner;(the Judgment reflect oral reason were given in open Court (R.218), there wasn't a written opinion.

On May 21, 1993 the Petitioner filed a timely: a Notice Of Appeal (R.220); a Designation Of The Record (R.222), and a Motion To Appeal (R.219) with Order and Return Date;

On May 27, 1993 Administrative Court Judge, Norbert Rayford, signed the appeal Order, that brought on this appeal, but omitted dating the return date (R.219);

The record reflect that the Petitioner filed approximately twenty three (23) different pleading with the Administrative Court. The record also reflect the Administrative Court only granted two of the Petitioners motions, one for time and the other one, being the Motion For Appeal, that brought on this Appeal.

On February 2, 1994 this appeal was lodged with the First Circuit, Court of Appeals, State of Louisiana (R.257);

A review of the appeal record indicated that it was incomplete and incorrect. After several months the Petitioner failed in an attempt to have the appeal transcript consistent with the record and in compliance with Petitioner's Designation Of The Record. However, the Petitioner did prove the Answer filed by Respondent's, Todd Electric, Inc. had been back dated to reflect a timely answer.

Pursuant to the Appellant Procedure of the state of Louisiana. On July 21, 1994 the Petitioner filed a timely Brief before the Court of Appeals First Circuit, state of Louisiana Case No. 94\CA\0861. In the Petitioner's Brief four different constitutional issues were raised as an assignment of alleged errors. The table of cases, statutes, authorities, statement of jurisdiction, assignment of alleged errors and argument, are reprinted in the Appendix to this Petition. Issue II is raised and argued in the Petitioner's Brief filed in the Appellant Court is the same issue before this Court as Issue I.

On April 25, 1995, by way of a motion to dismiss, filed by the Respondents the Court of Appeals dismissed this appeal. However, on September 7, 1994 Petitioner filed several pleading prior to the dismissal, including a Declinatory and a Peremptory Exceptions challenge the subject matter jurisdiction of the state court to dismiss this appeal in light of the fact that federal jurisdiction had been invoked, and was now within the Judicial Power of the Federal Court. Additionally, Petitioner, filed several motions and orders for the Respondents to show cause, in respect to the exceptions and other motions filed by the Petitioner. The petitioner doesn't have any knowledge or record of the state court ruling on these exceptions or motions filed by the Petitioner. They were either denied or not considered by the state court.

A timely Petition for Rehearing was filed by the Petitioner. Again Petitioner

reinstated his constitutional issues, and assigning several other constitutional issue as a consequence of the dismissal of this case. On May 25, 1995 the state court denied Petitioner's Application for Rehearing.

A timely Application for Writ of Certiorari and\or Review was filed with the Supreme Court of Louisiana. Again Petitioner reinstated his constitutional issues, that were raised in the Court of Appeal. On September 29, 1995 the Supreme Court of Louisiana denied

On or about March 30, 1985 the Petitioner received a job related injury while working as an electrician in Baton Rouge, La. for Respondent, Todd Electric, Inc.;

As a consequence of this injury the Petitioner was taken directly from the job sight, by means of an ambulance service, to the Baton Rouge General Hospital for treatment;

The Petitioner's Workers' Compensation Benefits became vested on or about May 5, 1985 when Petitioner started receiving benefits from Respondent Commercial Union Insurance Company in excess of nine hundred dollar a month, from the date injury, based upon an average income of $2,332.84 dollars a month (R.28);

The Petitioner received the aforementioned Benefits until or about June 18, 1987 when said benefits were modified (R.28) by Respondent, Commercial Union Insurance Company, based upon a

medical report (R.28) from Dr. Jack Loupe, Petitioner's treating physician, indicating the Petitioner "should be able to tolerate mild to moderate work". Consequently, said benefits were modified from about one thousand dollars a month to about seven hundred a month;

Petitioner contends and has litigated that he became vested in Workers' Compensation Benefits as the result of a job related injury, that occurred on or about March 30, 1985. Petitioner received Compensation Benefits to on or about February 11, 1991 at which time said benefits were terminated solely by the Respondents, without any prior notice or any hearing before the Office Of Workers' Compensation Administration.

Petitioner further contends and has litigated: that the Workers' Compensation Benefits are property rights by statutory entitlement, therefore the Petitioner's property rights cannot be terminated or modified, without due process;

The Respondents have taken the position and litigated that Workers' Compensation Benefits are not a property right by statutory entitlement and short of a judgment or order in favor of the Petitioner, ordering payment, they are not required to pay anything. Respondents further allege they paid benefits voluntarily until they had sufficient information in their opinion to terminate benefits and within their rights pursuant to the Louisiana Worker's Compensation Act, therefore are not required to litigate before the Office of Workers' Compensation Administration prior to

termination of Petitioner's Workers' Compensation benefits.

REASONS FOR GRANTING THE WRIT

I.

Whether Louisiana Law violates the Due Process Clause of the Constitution of the United States by allowing the Employer\Carrier to terminate Workers' Compensation Benefits of the Petitioner without any prior hearing before the Office of Workers' Compensation Administration, and in placing the entire burden of proof upon the Petitioner to litigate for Workers' Compensation Benefits.

The Petitioner submits that the pertinent part of the law cited in the Opinion of *Kendall, vs. Brock*, 689 F.Supp 354 (1987); *Board of Regents v. Roth*, 408 U.S. 564, 570-71 (1972); and *Mathews v. Eldridge*, 424 U.S. 319 (1976) are just a few authorities applicable to the case at hand.

The record and evidence in the case at hand will support the fact that on March 30, 1985 the Petitioner received a job related injury (Plaintiff's Exhibit #11) while working as an electrician in Baton Rouge, La. for Respondent, Todd Electric, Inc. The Petitioner was taken directly from the job sight, by means of an ambulance service, to the Baton Rouge General Hospital, in Baton Rouge, Louisiana for treatment, where Petitioner remained for approximately six days;

The Petitioner's Workers' Compensation Benefits became vested on or about May 5, 1985 (R.28) when Petitioner started receiving benefits from Respondent, Commercial Union Insurance Company.

The Petitioner received Workers' Compensation Benefits until or about June 18, 1987 when said benefits were modified (R.28) by Respondent, Commercial Union Insurance Company, biased upon a medical report (R.28) from Dr. Jack Loupe, Petitioner's treating physician, indicating the Petitioner "should be able to tolerate mild to moderate work". Consequently, said benefits were modified from about one thousand dollars a month to about seven hundred a month;

On about February 11, 1991 the Petitioner stopped receiving Workers' Compensation Benefits. On or about March 8, 1991, thinking that Petitioner's benefits may have been lost in the mail, sent a letter[1] to Respondent, Commercial Union Insurance and a second inquiry[2] was sent on or about March 14, 1991.

On or about May 1, 1991 Respondent, Commercial Union Insurance, sent a termination letter[3] (R.198) notifying Petitioner that his Workers' Compensation Benefits had been terminated.

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[1] see, Appendix L-1

[2] see, Appendix M-1

[3] see, Appendix N-1

The Petitioner filed a timely claim (R.4) for Workers' Compensation Benefits with attachments, raising several issues for litigation, before the Office of Workers' Compensation in Baton Rouge, Louisiana.

In the prosecution of the Petitioner's claim for compensation. The Petitioner filed numerous motions[4] and attempted to propound discovery in an attempt to the have a clearer understanding of exactly why and pursuant to what state laws the Petitioner's Workers' Compensation Benefits were terminated. Taking into consideration that Respondent, Todd Electric, Inc. and Respondent, Commercial Union Insurance Co., had both filed general denials[5] in respect to their Answers to Petitioner's claim.

A hearing was held on March 29, 1993 to resolve several of Petitioner's motions, all of which were denied, by the Administrative Court, including Petitioner's motion for summary judgment attacking the Answer[6] filed by Respondent, Commercial Union Insurance, Co. as being a general denial. The state court also denied was Petitioner's amended motion to set ruling(s) and\or order(s) aside or

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[4] see Appendix Q-1,2,&3

[5] see Appendix P-1,2,3,4,&5 and please note the filing date of the cover letter in comparison to the filing date of the answer and Appendix R-1&2

[6] see, Appendix R-1,&2

similar motion, in respect to the Order[7] entered on February 9, 1993.

Additionally, a constitutional question (R.212) was raised in Petitioner's Motion (to reinstate workers' compensation benefits and for any and all back payments of benefits and \or similar motion), in respect to the constitutionally of the termination of Workers' Compensation Benefits without first litigating before the Workers' Compensation Administration prior to said termination. In the hearing held on March 29, 1993 the following is found in the record (R.238&239);

> "THE COURT: IT'S MY RULING
> MR. KNIGHTEN: SIR?
> THE COURT: IT'S MY RULING THAT OUR PROCEDURES ARE FUNDAMENTALLY FAIR AND DO MEET CONSTITUTIONAL CHALLENGE. NOW, YOU CAN TAKE THAT DECISION TO THE FIRST CIRCUIT COURT OF APPEALS OR THE STATE SUPREME COURT OR THE UNITED STATES SUPREME COURT. I THINK THAT THE MORE TIME YOU WASTE ON CHALLENGING THAT, THE LONGER YOU'RE GOING TO BE WITHOUT YOUR BENEFITS."

constitutional challenges were pleaded and raised by the Petitioner, argued by the Respondents, and a Judgment[8] (R.217 and R.218) was entered by the Administrative Court, where the following is found (R.217):

> It is further the ruling of this Court

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[7] see, Appendix E-1,&2

[8] see Appendix D-1&2

that the claimant's assertion that the Workers' Compensation Administration denies him due process of law under the state and federal constitution is without merit and is rejected."

consequently, federal jurisdiction was invoked. A timely notice of Appeal[9], designation of the record[10] and a motion and order for appeal[11] was filed in the Office of Workers' Compensation on May 21, 1993 .

On April 28, 1994 the Petitioner was informed of the notice of lodging of appeal record. On July 21, 1994 a timely interlocutory appeal was filed in the First Circuit Court of Appeals styled as case number 94/CA/0861.

Originally, the Petitioner raised four Issues[12] in the appeal before the state court and in support of the Petitioners contentions cited numerous decisions[13] of this Court, which are as follows, ***see***: *Blackmer v. United States*,284 US 421, 52 S.CT 252; *Goldburg vs. Kelly*, 397 US 254, 90 S.CT 1011; *Gross vs. Lopez*, 419 U.S. 565, 95 S.CT 729; *Jacob vs Roberts*, 223 US 261, 32 S

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[9] see, Appendix K-1&2

[10] see, Appendix J-1,2&3

[11] see, Appendix I-1,2&3

[12] see, Appendix X-4,&5

[13] see, Appendix X-1 as found in Petitioner's appeal Brief filed in state court.

CT 303; *Louisville & N.R. Co. vs Western Union Teleg. Co.*, 234 US 369, 34 S CT 810; *Mobile, J. & K.C.R. Co. VS Turnipseed*, 219 US 35,43, 55 Led 78,80, 31 S.Ct 136; *Speiser VS Randall*,357 US. 513, 2 Led 2d 1460,78 S.Ct 1332; *Walker v Hutchinson*, 352 US 112, 77 S CT 200; *Western & A.R. Co. VS Henderson*, 279 US 639, 73 Led 884, 49 S.Ct 445; *Wisconsin vs Constantineau*,400 US 433, 91 S CT 507; and *Withrow vs. Larkin*, 421 US 35, 95 CT 1456. Additionally, Miller vs. Hoyle, 328 So. 2nd 757 (La. App. 1st Cir., 1976) and Kendall, vs. Brock,689 F.Supp 354 (1987) were cited.

The Petitioner briefed and argued in state Court that Workers' Compensation Benefits are in fact and law, a property right by statutory entitlement and the same "due process" requirements governing welfare benefits also govern Workers Compensation Benefits. Therefore Petitioners property rights could not be taken by the Respondents without a hearing and a opportunity to respond, see *Kendall, vs. Brock*, 689 F.Supp 354 (1987); *WISCONSIN VS. CONSTANTINEAU*, 400 US 433, 91 S CT 507, *WITHROW VS. LARKIN*, 421 US 35, 95 CT 1456; and *GOLDBURG VS. KELLY*, 397 US 254, 90 S.CT 1011 cited in Petitioner's Brief[14] filed in state court.

In support of Petitioner's Issue I., that before this Court for consideration was assigned in the State Court as Issue II and one of cases relied on and

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[14] see, Appendix X-8,9,10,11,&12

briefed[15] was *Kendall*.

The Petitioner submits the Opinion[16] found in Kendell was entered on the 27th day of September, 1985 by the Honorable Albert W. Coffrin, Chief Judge, United States District Court in Vermont. The pertinent part of the law cited in the Opinion of *Kendell* is applicable to the case at hand, one such case cited in *Kendell* is *Board of Regents v. Roth*, 408 U.S. 564, 570-71 (1972), in pertinent part as follows:

> "In order to establish a due process violation, the Plaintiff must prove (1) that he has been deprived of a property interest, and (2) that the procedural protections surrounding that deprivation did not comport with due process.

The Petitioner submits he meets the first test of Board of Regents and has been deprived a property interest which constituted a violation of due process, guaranteed the petitioner by the Fifth and\or Fourteenth Amendment(s) of the Constitution Of the United States and further submits the following:

The Respondents have taken the position in their brief filed in state Court that the Petitioners appeal is without merit and disputes Petitioner's contentions that his workers' compensation benefits constitutes a property interest, guaranteed by the Fifth and\or Fourteenth Amendment.

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[15] see, Appendix X-11,12,13&14

[16] see Appendix W-1,2,3,4,5,6,&7

The position taken by the Respondents in the state courts is in conflict with other state and federal case law found in support of the Petitioner's contentions, see; Baksalary v. Smith, 579 F. Supp. 218, 224-25 (E.D. Pa.) (three judge panel), aff'd, 591 F. Supp. 1279 (E.D. Pa. 1984) (same), appeal dismissed sub nom. Allstate Ins. Co. v. Baksalary, 105 S.ct. 890 (1985) (with Justices Brennan and Stevens noting that they would affirm); Auxier v. Woodward State Hosp., 266 N.W. 2d 139, 142 (Iowa.), cert. denied, 439 U.S. 930 (1979); Carr v. SAIF, 65 Or. App. 110, 670 P.2d 1037, 1042 (1983); Mosgo v. W.C.A.B., 480 A.2d 1285, 1288 (Pa. 1984); Mitchell v. State Workers' Comp. Comm'r, 256 S.E.2d 1, 10 (W. Va.1979); cf. Mathews v. Eldridge, 424 U.S. 319, 332 (1976) (social security disability benefits) and *Kendall, vs. Brock*,689 F.Supp 354 (1987).

In Kendall the District Court of Vermont found that a property interest exists and proceed to the question of whether sufficient procedural protections surrounded the taking of that interest.

The Petitioner submits he meets the second test of Board of Regents and has been deprived a property interest and further submits that the procedural protections surrounding that deprivation did not comport with due process, constituting a violation of due process, guaranteed the petitioner by the Fifth and\or Fourteenth Amendment(s) of the Constitution Of the United States and further submits the following

The landmark decision regarding what

procedural protections must surround the taking of a property interest is *Mathews v. Eldridge*, 424 U.S. 319 (1976). There the Court instructed that the following three factors must be balanced in assessing what process is due: (1) plaintiff's interest in the property at issue; (2) the fiscal and administrative burdens on the government which additional or alternative procedures would involve; and (3) the degree to which those added or alternative procedures would reduce the risk of an erroneous deprivation. Id. at 335.

In *Kendell*, the District Court looked no further than the Supreme Court's decision in Loudermill v. Board of Educ., 105 S. Ct. 1487 (1985), to determine that Kendell would prevail on the merits of her due process claim. In Loudermill, plaintiff was immediately discharged from his position as a public employee when his employer, the Cleveland Board of Education, discovered upon a routine examination of plaintiff's employment records that plaintiff had falsely stated on his initial job application that he had never been convicted of a felony. He was afforded no pre-termination right to respond to the charge of dishonesty or otherwise to challenge his dismissal.

In holding that a due process violation had occurred, the Court explicitly rejected the "bitter with the sweet" doctrine which had been set forth in Arnett v. Kennedy, 416 U.S. 134 (1974). The Court broadly stated that for deprivations of property interests, post-termination procedures by themselves are inadequate and that the termination

must be preceded by at least "notice and opportunity to respond." 105 S.Ct. at 1495. The Court was careful to note that its holding did not require a full adversarial evidentiary hearing prior to the termination, id., thus distinguishing the case from *Goldberg v.Kelly*, 397 U.S. 254 (1970). Yet the Court did hold that "an initial check against mistaken decisions -essentially, a determination of whether there are reasonable grounds" for the termination -- was required. 105 S. Ct. at 1495.

In the Court's decision in *GROSS VS. LOPEZ*, 419 U.S. 565, 95 S.CT 729 in respect to a 10 day suspension of students without a prior hearing, the Court found in pertinent parts, as follows:

> "A ten-day suspension of students from school could not be consider de minimis and therefore imposed without a hearing in complete disregard of due process; neither property interest in educational benefits temporarily denied nor liberty interest in reputation was so insubstantial that suspensions might be constitutionally imposed by any procedure school chose no matter how arbitrary." and "Young people, who under the Ohio statutes, are required to attend school, do not shed their constitutional rights at the school house door."

the Petitioner submits, that he did not leave his constitutional rights, guaranteed by and through the Fourteenth Amendment, at home when he became subject to the Workers' Compensation Laws of the

state of Louisiana.

Petitioner admits that due process does not in this case require a full evidentiary hearing of the type set forth in *Goldberg*. *Goldberg* involved termination of AFDC benefits, which are need-based, and therefore involved an interest greater than that involved in the instant case, which is not based upon need. Yet Petitioner asserts, that his interest in continuing benefits is at least as great as is that of a discharged employee who is not disabled as that of *Loudermill* or as great as a 10 day suspension of students without a prior hearings as that of *Gross* or least as great as in that of *Kendall*.

In Loudermill's the Courts broad statement indicating that no property interest could be terminated without at least pretermination notice and an opportunity to respond. In application of Loudermill to the case at hand, the Petitioner submits that the present procedures of the Office of Workers' Compensation of Louisiana violates Petitioners due process rights, guaranteed by and through the Fourteenth Amendment, as asserted in the hearing held on March 29, 1993 and in Petitioner's Briefs filed in the prosecution of this appeal in the state Courts.

This holding is in accord with that of several other decisions involving the termination of state workers' compensation benefits. See Baksalary v. Smith, 579 F. Supp. at 232-33; Auxier v. Woodward State Hospital, 266 N.W.2d at

142-43; Carr v. SAIF, 670 P.2d at 1046; Mosgo v. W.C.A.B., 480 A.2d at 1288; Mitchell v. State Workers Comp. Comm'r, 256 S.E.2d at 10.31

Due process, guaranteed by the Fifth and\or Fourteenth Amendments, demands pre-termination notice and opportunity to respond in some meaningful manner, before a decision to terminate benefits is rendered.

Looking to the pleading and the record found in this case, the Petitioner submits: The Petitioner's property interest that he had been receiving for over four years, being Workers' Compensation benefits, was terminated without any pre-termination notice and opportunity to respond in some meaningful manner, by Respondent, Commercial Union Insurance, Co., their termination letter[17] was sent to the Petitioner approximately three months after the termination of Petitioner's benefits. Constituting a violation of due process, see , *WISCONSIN VS. CONSTANTINEAU*, 400 US 433, 91 S CT 507, *WITHROW VS. LARKIN*, 421 US 35, 95 CT 1456; *GOLDBURG VS. KELLY*, 397 US 254, 90 SECT 1011; GROSS VS. *LOPES*, 419 U.S. 565, 95 SECT 729; *Baksalary v. Smith*, 579 F. Supp. at 232-33; *Auxier v. Woodward State Hospital*, 266 N.W.2d at 142-43; *Carr v. SAIF*, 670 P.2d at 1046; *Mosgo v. W.C.A.B.*, 480 A.2d at 1288; *Mitchell v. State Workers Comp. Comm'r*, 256 S.E.2d at 10.31 and *Kendall, vs. Brock*,689 F.Supp 354 (1987).

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[17] see, Appendix N-1

The petitioner submits that the "burden of proof" to obtain compensation benefits was unconstitutionally shifted to Petitioner to litigate before the Office of Workers' Compensation and file a 1008 form within one year from the date of termination. Constituting a violation of Due Process, see *SPEISER VS RANDALL*, 357 US. 513, 2 Led 2d 1460, 78 S.Ct 1332, in pertinent parts as follows:

> "The United States Supreme Court will strike down state statutes unfairly shifting the burden of proof in civil cases."

Respondent, Todd Electric, Inc. was the first Respondent to file an answer, being a general denial, to Petitioner's claim. Approximately two years later Petitioner discovered that Todd's Answer had been backed by someone from the Office of Workers to reflect a timely answer defeating Petitioner's Preliminary Judgment, requiring payment of benefits until this case is set for trial on the merits.

The Respondents in the case at hand was not required by the state courts to furnish the Petitioner with any information concerning the legal basis for the termination of Petitioner' property interest as reflected in the state Court's Order[18] in denying Petitioner's motion(s) to compel, especially in propounding discovery[19] from

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[18] see Appendix E-1,&2

[19] see Appendix T-1 found in the record at (R.93&94)

Respondent, Commercial Union Insurance, reflecting the reason and what legal authority was the basis of their decision for the termination, in light of the fact that the Respondent, Commercial Union Insurance, Co., had filed an answer[20](R.53).

The Petitioner filed numerous pleading with memorandums in the state court attempted to attack the answers filed by both Respondents as being vague and a beings general denials all of which were denied[21] by the state court. Constituting a violation of Petitioner's constitutional right to a fair and impartial trial, guaranteed by the Fifth and\or Fourteenth Amendments to the Constitution of the United States, see *WITHROW VS. LARKIN*, 421 US 35, 95 CT 1456.

The Petitioner submits that the appellant process remedy of the state court is inadequate to safeguard the due process rights of the Petitioner. The Petitioner, further submits that form the onset, the entire burden of proof in processing this appeal is unconstitutionally placed upon the Petitioner in respect to: (1) the length of time the appeal is docketed in the appellant court, in this case the Notice of appeal[22] and the Motion to Appeal was filed on May 21, 1993, the Order was

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[20] see, Appendix R-1,&2

[21] see Appendix Q-1,2&3

[22] see, Appendix K-1&2

signed on the 27th day of May, 1993[23], however the appeal record wasn't lodged in the appellant court until April 28, 1994, being about one year later; and (2) the appeal record transcribed by the Office of Workers' Compensation wasn't in compliance with Petitioner's Designation of the Record[24]. The record remains incorrect and incomplete in light of the fact the Petitioner filed pleading to correct the record. The Petitioner further submits that the state court submitted incorrect record in order to put an undue burden upon the Petitioner in processing this appeal. However, the Petitioner was able to correct the filing date of the Answer filed by Respondent, Todd Electric, Inc., as being filed untimely.

The Petitioner's Statement of Jurisdiction[25] submitted and filed in the state court reflects this appeal was taken pursuant to art. 2083[26] of the appellant procedure of Louisiana. The ruling[27] of the state court dismissing this appeal, reflects that "The appeal was taken from a non-appealable interlocutory judgment. La. C.C.P. art. 1841." The Petitioner submits that art.

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[23] see Appendix I-1,&2, motion and order

[24] see Appendix J-1,2&3

[25] see, Appendix H

[26] see, Appendix F

[27] see, Appendix C

1841[28] has nothing whatsoever with the Appellant Procedure of the state of Louisiana other than referencing different types of Judgments, being final or interlocutory.

The Petitioner submits that the state court unconstitutionally terminated the due process rights of the Petitioner in the hearing held on March 29, 1993 where the following is found (R.238,239):

> "THE COURT: IT'S MY RULING
> MR. KNIGHTEN: SIR?
> THE COURT: IT'S MY RULING THAT OUR PROCEDURES ARE FUNDAMENTALLY FAIR AND DO MEET CONSTITUTIONAL CHALLENGE. NOW, YOU CAN TAKE THAT DECISION TO THE FIRST CIRCUIT COURT OF APPEALS OR THE STATE SUPREME COURT OR THE UNITED STATES SUPREME COURT. I THINK THAT THE MORE TIME YOU WASTE ON CHALLENGING THAT, THE LONGER YOU'RE GOING TO BE WITHOUT YOUR BENEFITS."

the state court made a ruling on a constitutional issue, as reflect in the Judgment[29] and unconstitutionally terminated the due process rights of the Petitioner in the prosecution of his claim, constituting a final and appealable judgment\order. The Petitioner believes the case authority in respect to this issue is either found or cited in *GOLDBURG VS. KELLY*, 397 US 254, 90 S.CT 1011 and\or *Mathews v. Eldridge*, 424 U.S. 319 (1976).

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[28] see, Appendix G-1

[29] see, Appendix D

The Petitioner submits prior to the dismissal of this case in state court, he filed numerous pleading, memorandums, and motion and orders for the Respondents to show cause, in state appellant court in an attempt to prevent the state court from dismissing this appeal, all of which were either denied or not ruled on. Constituting a violation of due process.

The state Court's ruling that the Petitioner's assertion that the Workers' Compensation Administration denies him due process of law under the state and federal constitution is without merit and is rejected. In application of this ruling of the State Courts to the State Laws of Louisiana has mandated that Petitioner will suffer an irreparable injury in the prosecution of Petitioner's claim, consequently being denied due process.

The Petitioner submits that under the present laws of Louisiana there is no constitutional state remedy to resolve this claim and protect his due process rights guaranteed by the Constitution of the United States and the risk that the Petitioner will suffer irreparable injury is to high to be tolerable under the due process clause to allow the State Courts rulings and relevant State Laws to stand.

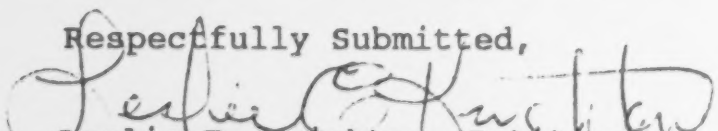
In the prosecution of this case the court of first instance denied almost every motion the Petitioner filed and backed dated the filing date the Answer filed by Respondent, Todd Electric, Inc., to indicate a timely answer. The State Court of last resort, denied to hear this case and on October 26, 1995 the Supreme

Court of Louisiana denied[30] Petitioner' Motion to Stay Proceedings. Consequently, this matter has been set for trial on the merits, on the 21st day of February, 1996 without due process protection guaranteed the Petitioner by the constitution of the United States, he will suffer irreparable injury.

CONCLUSION

For one, or any combination, of the foregoing reasons set forth in this petition, Petitioner respectfully request that his Petition for a Writ of Certiorari should be issue to review the judgment(s) and order(s) of the state courts of Louisiana. Additionally, Petitioner is respectfully requesting a favorable rulings on the Constitutional issue submitted, all back payments and full reinstatement of Workers' Compensation Benefits, implementation of a procedure that requires, a notice of termination, or reduction, including appropriate references to statutes, regulations, and decisional law, prior to a decision in termination of Petitioners Workers' Compensation Benefits, and a hearing to be held at a meaningful time.

Respectfully Submitted,



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[30] see Appendix S-1